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May 6, 1998

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MAY - 6 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Salas, Secretary
Federal Communications Commission
Room 222
1919 M Street, N. W.
Washington, D. C.

HAND-DELIVERED

Subject: Ex Parte Presentation Notice

Reference: CC Docket No. 96-45

Dear Ms. Salas:

Enclosed please find an original and one copy of a Summary of an oral presentation made on Tuesday, May 5, 1998 by Jane Walters, Commissioner and Jackie Shrago, Director, both of the Tennessee Department of Education, and the undersigned to Irene M. Flannery of the Commission's Common Carrier Bureau. This Summary reflects matters already reflected in the written comments in the referenced proceeding.

Very truly yours,



William K. Coulter

WKC:kla
Enclosures

cc: Irene M. Flannery, Attorney at Law
Common Carrier Bureau

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SUMMARY
OF
TENNESSEE OPPOSITION

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MAY - 6 1998

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In its Petition, ISIS 2000, an unsuccessful bidder seeking to overthrow a State contract for the provision of Internet services to the State's schools, questions, and requests a Commission determination as to, the eligibility for Universal Service Fund ("USF") support of four (4) elements of the winning bidder's 1998 Internet Access Service Program for the Tennessee Department of Education ("Department"). This Program was submitted to the Schools and Libraries Corporation ("SLC") by the Department for such support on April 15, 1998. The Department believes that the ISIS 2000 concerns are unfounded and that its Petition should be dismissed.

First, in support of its request, ISIS 2000 asserts that "for essentially the same overall scope of services, the price submitted by ISIS 2000 is "approximately \$23 million lower" than the price submitted by the Program's successful bidder, Education Networks of America, Inc. ("ENA"). As detailed in Section III herein, after a review of all competing bids for Program services by the Department under the State's Procurement Rules, the Department concluded not only that the ISIS 2000 services were not similar to those proposed by ENA but also that ISIS 2000 proposed a technically inferior and unacceptable Service. Further, in order for ISIS 2000 to bring its cost proposal up to a comparable range, or for the State to augment the proposal, would result in a cost as great as \$187 million, or a \$113 million higher price for ISIS 2000 than for ENA.

Second, ISIS 2000 asserts that ENA's purchase of "used" ConnecTEN equipment from the State of Tennessee, and the subsequent use of this equipment, in lieu of "new" equipment, in ENA's provision of Internet Access Service to the State's schools, would violate FCC Rules both through the "funding of existing ineligible equipment and by artificially inflating the federal USF contribution." As detailed in Section IV herein, the Department evaluated both proposals and found ENA's proposal to be superior and opted to obtain an Internet Access Service from ENA, rather than to continue to own and operate a state network, as proposed by ISIS 2000. ENA, in its proposal to the Department, offered to purchase the ConnecTEN network and to use elements of the network in the provision of its Internet Access Service to the State's 1,800 school sites, beginning July 1, 1998. The clear advantages to disadvantaged and remote schools of obtaining end-to-end service,

with its overall network and equipment maintenance, its guaranteed reliability, and its full service transition responsibility for the schools, are unquestionable. The Commission's and the SLC's Rules clearly permit the equal funding of both "new" and "used" communications equipment by Internet Access Service Providers and telecommunications carriers for new services. Furthermore, the Rules would appear to require that the \$4.5 million USF savings (i.e. USF "savings" from the use of "used" ConnectTEN equipment) be reflected in the Department's USF funding request. The ISIS 2000 proposal, on the other hand, was either to require the State to continue owning, operating and incrementally funding the current ConnectTEN, or was to "scrap it" and purchase a "new" ConnectTEN II, which would require a new investment to be owned by the State, in the amount of as much as \$113 million more for ISIS 2000 than for ENA, and with the increased service and financial risks that entails.

Third and fourth, ISIS 2000 asserts that "various other elements of the new services proposed by ENA are ineligible for USF discounts, . . . including ineligible WAN equipment and support services" and that the funding of "already discounted ISDN services" would violate Commission Rules. As detailed in Section V herein, the Department believes that ISIS 2000 has misread the Commission's Rules and has overlooked the most current rulings of the Tennessee Regulatory Authority ("TRA") as they apply to "WAN and Internet service providers other than the State" and to "tariffed ISDN circuits," respectively.

The Department believes that the elements proposed by it for funding are subject to such an eligibility classification, based on outstanding Commission and SLC guidance and Rules and in the public interest, and it so renews its request for such funding.

In taking this action, the Commission will recognize that only the ENA proposal, as funded, can guarantee full Internet access to Tennessee schools for less than \$1,000 per school (or \$1.97 per student) and can guarantee that all U.S. schools have full access to the fund, not only without it being depleted but also with greater than 60% of it being carried over and available for future years and schools.